Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs	)	

OPPOSITION OF QWEST CORPORATION
TO PETITIONS FOR RECONSIDERATION/CLARIFICATION

Qwest Corporation ("Qwest") hereby opposes the Petitions for Reconsideration/ Clarification filed by Rural Cellular Association ("RCA") and American Association of Paging Carriers ("AAPC")[1] in connection with the *Declaratory Ruling and Report and Order* issued by the Federal Communications Commission ("Commission") on February 24, 2005 in the above-referenced proceeding.[2]

I. INTRODUCTION AND SUMMARY

As Qwest has stated in prior filings in connection with this proceeding,[3] Qwest believes the *T-Mobile Order* properly and necessarily clarifies that commercial mobile radio service ("CMRS") providers cannot demand interconnection from an incumbent local exchange carrier

[1] Petition for Reconsideration filed by American Association of Paging Carriers, filed Apr. 29, 2005; Petition for Clarification or, in the Alternative, Reconsideration filed by Rural Cellular Association, filed Apr. 29, 2005.

[2] *See In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order*, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*").

[3] *See, e.g., ex parte* letter dated June 16, 2005 from Robert B. McKenna, Qwest to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92.

("ILEC") outside of the ILEC's tariff without negotiating the terms and conditions of such interconnection in good faith.[4] If a CMRS provider seeks to interconnect with an ILEC, it may either purchase tariffed services,[5] where available, or negotiate an agreement spelling out the terms and conditions of such interconnection. Again, both parties must negotiate in good faith when dealing with such interconnection. The contrary position -- that CMRS providers can somehow interconnect (directly or indirectly) with ILECs without any legal basis (contract or tariff) at all is clearly wrong, and the *T-Mobile Order* provided much needed clarification regarding the duty of CMRS providers to negotiate interconnection agreements in good faith and establish appropriate interim compensation arrangements. But, other than the procedural shift of conflict resolution from the Commission itself to state arbitrations under Section 252, the *T-Mobile Order* simply confirms what the law has been for decades -- reaffirming that carriers have a general obligation to interconnect with each other, that such interconnection can be by tariff or by contract at the option of the parties (unless Commission rules specify otherwise), and that negotiations of interconnection contracts must be undertaken in good faith.

The T-Mobile proceeding arose in the context of indirect interconnection and presented issues regarding charges for transport and termination in that context (*i.e.*, situations where the actual physical interconnection between the ILEC and the CMRS provider was provided by another carrier). Hence, the possibility of a CMRS carrier demanding physical interconnection

[4] The *T-Mobile Order* also allows carriers to use the Section 252 arbitration process to resolve interconnection disputes rather than relying on the Commission's processes. While ILECs do not have a statutory right to demand Section 251(b) or (c) interconnection with CMRS carriers, they certainly have the right to demand interconnection with CMRS providers pursuant to Sections 201(a) and 251(a) of the Act and to insist that the CMRS provider conduct itself in good faith during the negotiation (and performance) phases of the agreement.

[5] Qwest does not read the *T-Mobile Order* as precluding a tariff arrangement between a CMRS provider and an ILEC. Rather, we view *T-Mobile* as precluding an ILEC from demanding that a CMRS provider pay a tariffed rate against its will. The language of Section 20.11(f) is not to the contrary.

with an ILEC but refusing to pay for what it ordered or to negotiate the terms of such an arrangement was not directly implicated in the factual premise of T-Mobile. However, the *T-Mobile Order*, quite appropriately, addresses the broader interconnection obligations of CMRS providers. In compliance with that decision, Qwest, among other things, previously announced that it was withdrawing its wireless Type 1 and Type 2 interconnection tariffs and replacing those tariffs with proper interconnection agreements filed pursuant to Sections 252(a)(1) and 252(e)(1) of the Telecommunications Act. In the meantime, existing arrangements are modified and treated under Section 51.715 of the Commission's rules, and Qwest's interim prices for interconnection comply with Section 51.715(b) of those rules. In their respective petitions, RCA and AAPC now seek to unravel important aspects of the *T-Mobile Order*. As discussed more fully below, these petitions should be denied.[6]

II. ARGUMENT

A. Qwest Opposes RCA's Request that the Commission Modify the Order to Provide that New Rule 20.11(f) Only Applies to Reciprocal Compensation

In its petition, RCA objects to the *T-Mobile Order* to the extent that it applies new rule 20.11(f) to interconnection and allows ILECs to invoke negotiation and arbitration rights under Section 252. RCA asks the Commission to revise the *T-Mobile Order* to provide that new rule 20.11(f) only applies to reciprocal compensation arrangements, not interconnection generally. But this position, if adopted, could be interpreted to mean that CMRS providers could interconnect with ILECs without an interconnection agreement, a position that seems terribly at

[6] This opposition addresses only two petitions for reconsideration, those filed by RCA and AAPC. Qwest's silence on the other petitions should not be taken to mean acquiescence or concession that they are meritorious. Qwest addresses these two petitions only because they contain the same fundamental error which must not be permitted to continue.

odds with the Communications Act itself.[7] A CMRS provider desiring to interconnect with an ILEC must do so pursuant to some legal instrument, and, in the absence of a tariff must negotiate an agreement to cover the terms and conditions of such interconnection. This is a given. Certainly RCA is not claiming that it has the right to negotiate an interconnection agreement with an ILEC in bad faith. The *T-Mobile Order* and new rule 20.11(f) merely effect these obligations by specifying that CMRS providers must negotiate those agreements necessary to effectuate lawful interconnection in good faith and modify the dispute resolution options of the parties.

Nor is this, as RCA suggests, inconsistent with the special obligations imposed on ILECs under Section 251(c). It is true, as RCA suggests, that only ILECs are subject to the special interconnection obligations imposed under Section 251(c) of the Act, and only ILECs are obliged to comply with Section 251(b). An ILEC cannot demand that a CMRS provider enter into a Section 251(c) agreement if the CMRS provider resists such negotiations, and nothing in the *T-Mobile Order* holds to the contrary. But, if a CMRS carrier desires to interconnect with an ILEC, it must do so pursuant to an agreement, it must be willing to negotiate the terms and conditions of such a contract, and it must be willing to do so in good faith. This is not only the law, it is simple common sense. Section 20.11(f) of the Commission's rules does nothing more than codify as a rule the long-standing proposition that a CMRS provider desiring to interconnect with an ILEC must be willing to play by the rules in order to obtain such interconnection. Accordingly, the RCA petition should be denied.

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[7] *See In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), Memorandum Opinion and Order*, 17 FCC Rcd 19337, 19340-41 ¶ 8 (2002).

B. Qwest Opposes AAPC's Attempt to Limit the *T-Mobile Order* to Two-Way CMRS Providers

AAPC's position in this proceeding reflects a fundamental mischaracterization of the *T-Mobile Order* and Commission rules regarding interconnection which is almost identical to RCA's mistake.[8] AAPC contends that paging companies should be able to interconnect directly with ILECs without benefit of either a tariff or an interconnection agreement. In this respect, the *T-Mobile Order* comes on the heels of a long industry history where certain paging companies have been obtaining interconnection services without the benefit of either a tariff (the tariff obviously could not apply if the tariffed rate was not paid)[9] or an interconnection agreement. The obvious answer to this problem was to move all paging carriers who preferred not to pay the tariffed rate to interconnection agreements. If paging carriers still desired to purchase tariffed services, they could do so only upon paying the lawful tariffed rate. Qwest has been trying to implement this solution for some time.

The *T-Mobile* decision gave Qwest an additional impetus to correct this obviously unacceptable situation when it emphasized the obligation of CMRS providers to negotiate interconnection agreements in good faith.[10] Again, the *T-Mobile Order* does not provide the basis on which Qwest may insist that a carrier of any kind, including a paging carrier, may not interconnect with Qwest's local exchange facilities without some sort of written instrument, be it a tariff or an interconnection agreement. Nor does the *T-Mobile Order* provide a basis for a

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[8] AAPC accused Qwest of misusing the principles of *T-Mobile* in an *ex parte* letter filed on May 31, 2005. Qwest responded fully to that letter with its own *ex parte* presentation submitted on June 10, 2004.

[9] This effort to purchase tariffed services without paying for them was not universal. Many paging and other CMRS provider companies have recognized their legal obligation to pay the tariffed rate when they order tariffed services.

[10] *T-Mobile Order*, 20 FCC Rcd 4855 ¶ 16, *and see* 47 C.F.R. § 20.11(f).

claim that a paging carrier has the right to demand interconnection services from Qwest pursuant to Qwest's intrastate tariffs and not pay the tariffed rate. An interconnection agreement was the only appropriate vehicle to deal with paging carrier interconnection. As Qwest was understandably reluctant to disconnect paging carriers who refused to either pay the tariffed rate or negotiate an interconnection agreement, the *T-Mobile Order* was a welcome clarification. But it was not necessary to establish this basic point.

In its petition, AAPC now seeks a ruling from the Commission that paging carriers are exempt from the Communications Act and normal contract principles and, instead, have the right to interconnect with ILECs totally outside the law.

AAPC does not state any legitimate basis for limiting the application of the *T-Mobile Order* to two-way CMRS providers. It certainly provides no basis for allowing it to circumvent the law and interconnect with ILECs without any agreement at all specifying the terms and conditions of such interconnection. Accordingly, AAPC's petition should also be denied.

Respectfully submitted,

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